

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
W. R. GRACE & CO., et al.,)	Case No. 01-01139 (JKF)
)	(Jointly Administered)
Debtors.)	
)	Re: Docket No. 13406
)	

**CLAIMANTS' REPRESENTED BY DIES & HILE, L.L.P.¹
PRELIMINARY DESIGNATION OF FACT AND EXPERT
WITNESSES REGARDING ADJUDICATION OF LACK OF
HAZARD ISSUE AS DESCRIBED IN THE 15TH OMNIBUS OBJECTIONS**

The Claimants represented by the law firm of Dies & Hile, L.L.P. (hereinafter the "D&H Claimants") file this Preliminary Designation of Fact and Expert Witnesses Regarding Adjudication of Lack of Hazard Issue pursuant to Amended Exhibit B to Order Setting Various Deadlines Regarding Objection to Asbestos Property Damage Claims, attached to the Amended Order Setting Various Deadlines Regarding Objections to Asbestos Property Damage Claims dated October 13, 2006.

I.

Expert Witnesses

A. Building Specific Expert Witnesses. D&H Claimants intend to call to testify, live or by deposition, during the Adjudication Phase of Lack of Hazard Issue those expert witnesses listed in Exhibit "A." The subject matter of the witnesses testimony will include the following: 1) the history of Claimants' buildings and the in-place asbestos-containing acoustical

¹ The Asbestos Property Damage Claimants represented by the law firm of Dies & Hile, L.L.P., on whose behalf this Preliminary Designation of Fact and Expert Witnesses is being filed include the following: State of Arizona; State of Arkansas; State of Connecticut; State of Oklahoma; State of Oregon; City of Amarillo, Texas; City of Houston, Texas; Coleman Housing Authority; El Paso County, Texas; Harlingen Housing Authority; Sabine River Authority of Texas; City of Phoenix, Arizona; City of Tucson, Arizona; Maricopa County, Arizona; Cook County, Illinois; City of Eugene, Oregon; Eastern Oregon University; Oregon Health & Science University; Oregon State University; Portland State University; Southern Oregon University; University of Oregon; Western Oregon University; Six Hundred Building Ltd.; BNC Forum LP Texas Limited Partnership; and EPEC Realty, Inc.

plaster and/or fireproofing materials (hereinafter referred to as a “asbestos-containing surface treatment materials” or “ACSTM”) manufactured by W.R. Grace & Co. (“Grace”)²; 2) inspections, assessments and surveys of the D&H Claimants’ buildings for asbestos-containing materials (“ACM”); 3) the condition and characteristics of the Grace ACSTM installed in Claimants’ buildings; 4) the location and accessibility of the ACSTM to building maintenance, custodial activities and/or occupants; 5) the friability of Grace’s ACSTM installed in the D&H Claimants’ buildings; 6) efforts to maintain the Grace ACSTM, including but not limited to, the adoption of operations and maintenance programs, work practices or other actions taken to mitigate or eliminate release of asbestos fibers from ACSTM; 7) abatement related activities including but not limited to encapsulation, enclosure and removal of Grace ACSTM in the D&H Claimants’ buildings; 8) state & federal rules and regulations regarding ACSTM and asbestos in general; 9) typical maintenance and custodial activities, and other foreseeable activities that will affect the Grace ACSTM; 10) the propensity of Grace’s ACSTM to crack, fracture, fissure, and delaminate thereby releasing asbestos fibers; 11) the contamination of D&H Claimant’s buildings by asbestos dust and/or debris and fibers released from Grace ACSTM; 12) the health hazards associated with Grace’s ACSTM; and 13) the design and construction of the D&H Claimants’ buildings and operations and maintenance (“O&M”) activities concerning the Grace ACSTM. The experts listed in Exhibit “A” are licensed or certified by their respective states in one or more areas, including but not limited to, Asbestos Building Inspector, Asbestos Management Planner, Asbestos Abatement Contractor, Asbestos Project Designer, Asbestos Contractor Supervisor, and/or Asbestos Air Monitoring Specialist, and/or building/facility engineers/managers.

² Reference to Grace shall include its predecessor and licensees that designed, manufactured, and sold spray-applied asbestos-containing acoustical and fireproofing products.

B. Asbestos/Technical Expert Witnesses – All Claims³. The D&H Claimants intend to call to testify, live or by deposition, during the Adjudication Phase for Lack of Hazard Issue those expert witnesses listed in Exhibit “B.” In addition to the matters set forth in Par. I.A above, the experts identified in Exhibit “B” may also testify regarding the following: 1) their inspections, surveys, assessment and review of the Grace ACSTM and/or the D&H Claimants’ buildings and the potential for asbestos fiber release; 2) the results of air, bulk, dust/debris samples or other inspections, surveys and testing in connection with the Grace ACSTM in the D&H Claimants’ buildings, and their findings and opinions with regard thereto; 3) federal/state regulations applicable to asbestos in buildings and the Grace ACSTM; 4) the proper assessment techniques to determine and measure asbestos fiber release and/or contamination related to ACSTM dust/debris; 5) the presence of asbestos contamination in the D&H building; 6) the tendency or propensity of Grace ACSTM to release asbestos fibers; 7) the friability of the Grace ACSTM; 8) the defective nature of the Grace ACSTM; 9) the potential hazards to custodial, maintenance and other building occupants due to the presence of the Grace ACSTM in the D&H Claimants’ buildings; 10) their assessment of the ACSTM and their opinions in connection with bulk, dust/debris and/or air sampling of such ACSTM; 11) fiber release simulations and/or experiments performed on the Grace ACSTM or other similar ACSTM which was the subject of testimony in property damage asbestos cases wherein W.R. Grace was a party; 12) the scientific methodologies for bulk, air and/or dust sampling and their appropriateness and use regarding the assessment of ACSTM; and 13) their opinions with regard to the issues and matter discussed in their expert reports and the reports of Grace’s expert witnesses. The witnesses identified in Exhibit “A” or “B” who are representatives of one of the D&H Claimants’ and/or who have participated in building investigations, surveys, inspections or assessments may also testify as

³ Asbestos Technical Witnesses include Microscopist, Materials Characterization, Hygienist, EPA Accredited Building Inspection/Management Planning/Air Technician, and/or other specialized asbestos or building-related experience or qualifications.

custodians of records for the respective D&H Claimants and may testify that documents, data, including, but not limited to, building plans and specifications, or construction related documents, building surveys, abatement plans and specifications, and abatement-related documents are kept by the D&H Claimants or by the parties performing such investigations, surveys, inspections or assessments in the ordinary course of business as required by Fed. R. Evid. 803(6). D&H Claimants may submit an affidavit in lieu of such testimony as provided for by Fed. R. Evid. Rule 902(11).

C. Medical and Health-Related Experts. The D&H Claimants intend to call to testify, live or by deposition, during the Adjudication Phase for Lack of Hazard Issue the expert witnesses listed in Exhibit "C." The subject matter of these witnesses testimony will include: 1) the health effects of exposure to asbestos, including non-occupational and/or environmental exposure to such as in-place ACM in buildings; 2) the potential health risks facing those who come in contact with, or disturb in-place ACM and/or dust from such materials; 3) the medical epidemiology with regard to asbestos health effects; 4) medical and scientific studies, case reports, and literature regarding asbestos health effects; 5) asbestos health effects associated with exposure to in-place ACM in buildings, environmental or "low level" exposures to asbestos; 6) related issues of public health policy as it may be impacted by exposure to asbestos-containing products in buildings; 7) asbestos disease process; 8) incidence of disease among populations of exposed individuals including building maintenance and/or custodial workers; 9) asbestos cancer and/or mesothelioma disease process and exposure, including incidence among both occupationally and/or environmentally exposed individuals; 10) their opinions from examination and/or treatment, or review of medical records or case reports regarding the diagnose of individuals who were exposed to in-place ACM in buildings, or were environmentally exposed to asbestos and developed asbestos-related health conditions, including asbestosis, cancer and/or

mesothelioma; 11) applicable state and/or federal regulations regarding ACM in buildings; and 12) the public health policy as expressed by EPA, OSHA, NIOSH or other applicable regulations concerning exposure to asbestos and ACM.

D. Grace's Knowledge of Health Hazards of Asbestos and Failure to Warn or Test With Regard to Their ACM Products. The D&H Claimants intend to call to testify, live or by deposition, during the Adjudication Phase for Lack of Hazard Issue the expert witnesses listed in Exhibit "D." The subject matter of these witnesses testimony will include: 1) when and how Grace first learned of the hazards associated with asbestos; 2) the information obtained by Grace regarding the hazards associated with asbestos; 3) workers' compensation claims filed by Grace employees at its Libby, Montana facilities and/or the licensee vermiculite expansion plants; 4) Grace's attempts to conceal the hazards associated with the manufacturing, mining, sale, installation of its ACSTM and presence of their ACSTM products in buildings; and 5) the state of the medical and scientific literature regarding the knowledge of the harmfulness and health effects of asbestos.

II.

Fact Witnesses

A. General Liability Fact Witnesses. The D&H Claimants intend to call to testify, live or by deposition, during the Adjudication Phase for Lack of Hazard Issue the fact witnesses listed in Exhibit "E." In addition to the matters set forth in Paragraph I.D. above, the subject matter of these witnesses testimony will include: 1) the use or incorporation of asbestos by Grace and its predecessors in building products; 2) the presence of tremolite asbestos in vermiculite and chrysotile asbestos used in Grace ACSTM; 3) the sales and marketing strategies regarding Grace ACSTM; 4) representations made by Grace employees that its products posed no health hazard to workers or building occupants; 5) problems associated with the fallout,

cracking, fracturing, fissuring and delamination of Grace ACSTM which were known to Grace; 6) efforts by Grace to conceal the hazardous nature of its ACSTM; 7) Grace's attempts to hide and conceal the fact that Grace acoustical plaster and fireproofing materials contained asbestos and was likely to dust and release asbestos fibers under normal conditions; 8) the defective design of Grace ACSTM; 9) Grace's failure to test and/or warn architects, engineers and building owners of the hazards associated with its ACSTM; and 10) the availability of safer alternative designs for Grace's ACSTM.

B. Claimant Fact Witnesses. D&H Claimants intend to call to testify, live or by deposition, during the Adjudication Phase for Lack of Hazard Issue any such witness listed on Exhibit "F", and Exhibit "A" or Exhibit "B" who has knowledge of 1) the D&H Claimant's buildings at issue; 2) the Grace ACSTM; 3) the history of the construction and design of the building; 4) the condition of the Grace ACSTM past and present; 5) operations and maintenance related building issues, including work practices, abatement, encapsulation, enclosures and/or removal in connection with the buildings at issue; 6) fiber release, dusting, fallout and/or contamination in such buildings from the Grace ACSTM; and 7) any other similar building or claimant specific issues.

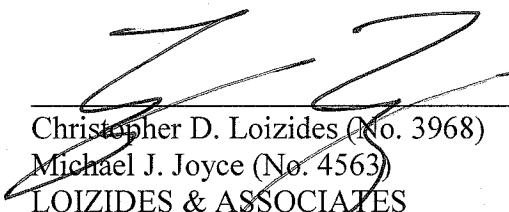
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III.

Other Designated Expert or Fact Witnesses

In addition to the witnesses listed in the attached exhibits, the D&H Claimants reserve the right to call to testify at the hearing any fact or expert witness listed on any other party's witness disclosure for the Adjudication of Lack of Hazard Issues. The subject of their testimony will be the same as that identified by such other party. In addition, the D&H Claimants reserve the right to supplement the disclosure with additional fact and expert witness that may be needed to address lack of hazard issues raised by Debtors.

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